IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 11 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and sd/-
MR.JUSTICE M.C.PATEL sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? yes

2. To be referred to the Reporter or not? yes

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? 3 to 5 No

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VIMLA SIDDHARTHBHAI

Versus

COMMISSIONER OF INCOME TAX

Appearance:
MR JP SHAH for Petitioner
MR.PRANAV G.DESAI with MR MANISH R BHATT for Respondent.

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL
Date of decision: 18/06/98

ORAL JUDGEMENT (Per C.K.Thakkar,J.):

The following question has been referred for the opinion of this Court:-

"Whether, on the facts and in the circumstances of the case, the interest paid to Taral and Swati

was neither deductible under section 80V nor under section 57(iii) of the Income-tax Act,1961?"

So far as the latter part of the reference i.e. whether interest paid to Taral and Swati was deductible under Section 57(iii) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") is concerned, the point is concluded against the assessee in Smt. Padmavati Jaikrishna v. Addl. Commissioner of Income Tax, Gujarat,166 ITR, 176 (SC). Hence, to that extent, the question must be answered against the assessee and in favour of revenue.

The point regarding deductibility or otherwise of the interest paid under Section 80V of the Act survives for our consideration. Section 80V of the Act, as it stood then, read as under:-

"80(V) In computing the total income of an assessee, there shall be allowed by way of deduction any interest paid by him in the previous year on any money borrowed for the payment of any tax due from him under this Act."

The learned Counsel for the assessee submitted that in computing the total income of assessee, deduction of any interest paid by him on any money borrowed for payment of tax due from him under the Act must be allowed. The Counsel submitted that the underlying object of that provision was that whenever an amount of tax was due from an assessee, it was expected of him to pay the said amount. If such a person was not in a position to pay tax, it was provided in the Act that it was open to him to borrow money for the purpose of payment of tax due from him. Obviously, in these circumstances, the assessee had to pay interest on such borrowing. Parliament, therefore, made the above provision granting the benefit of deduction of interest paid on such money borrowed by the assessee.

In the instant case, it is the case of the assessee that for payment of tax due from him he had to take loan from Lalbhai Dalpatbhai (H.U.F.). It was for Assessment Year 1976-77 on which he had to pay interest. The amount of interest was accordingly deducted by allowing such deduction in accordance with the law. According to the assessee, however, he could not repay the loan to Lalbhai Dalpatbhai (H.U.F.) and a part of the amount had to be borrowed from Taral Siddharthbhai and

the balance from Swati Siddharthbhai to repay the loan to Lalbhai Dalpatbhai (H.U.F.). The assessee, therefore, claimed deduction of payment of interest to Taral Siddharthbhai and Swati Siddharthbhai. The argument of the assessee was that what is to be considered for granting benefit of Section 80V was as to whether the amount was taken for payment of tax. If the said question is answered in the affirmative, the assessee would be entitled to such deduction under Section 80V of the Act. In the case on hand, according to the assessee, the amount was taken for the purpose of payment of tax. It is true that initially the amount was taken from Lalbhai Dalpatbhai (H.U.F.) and tax was paid. It is also true that I.T.O allowed deduction of interest in the year 1976-77. The assessee, however, contended that since the amount of loan could not be repaid to Lalbhai Dalpatbhai (H.U.F.) which was, as accepted by the I.T.O., for the purpose of payment of tax, further amount by way of loan borrowed from Taral and Swati must be construed as referable to payment of tax by the assessee and accordingly the benefit under Section 80V of the Act could not be disallowed.

The Tribunal was of the opinion that the argument was not acceptable. The reasoning of the Tribunal was that the conditions precedent for application of Section 80V were not present. According to the Tribunal, the following requirements must be complied with before the assessee claims exemption under Section 80V:-

(i) There have to be taxes due from the assessee;

(ii) Borrowings are to be made by the assessee;

(iii) Those borrowings are to be utilised for the purpose of payment of due taxes; and

(iv) Interest is to be paid on such borrowings.

The Tribunal held that when the amount was taken by the assessee from Lalbhai Dalpatbhai (H.U.F.), all the requisites were present and the assessee was entitled to deduction in accordance with Section 80V of the Act. Since he was entitled to the benefit, it was granted. But once the amount of tax was paid, the provisions of Section 80V of the Act could not be pressed in service by the assessee for payment of interest on loan taken from Taral and Swati for repayment of loan to Lalbhai Dalpatbhai (H.U.F.). It is also observed that when the borrowings were made from Taral and Swati, there was no

tax due under the Act because the payment had already been made in respect of such tax. The object of the section, according to the Tribunal, was to enable the assessee, only to pay tax as due and not to repay the loan and, hence, the benefit claimed by the assessee could not be granted. The Tribunal was also of the opinion that if the contention of the assessee would be upheld, in several cases, assessees may come forward to claim exemption in a series of loans. A first loan may be replaced by second and second may be replaced by third. There may not be an end to such replacement of loans. Such a construction would not be in accordance with law.

Mr.Shah, the learned Advocate for the assessee, raised various contentions. He submitted that the underlying object of the provisions of Section 80V of the Act has been totally ignored by the Tribunal. He further submitted that even if two interpretations are possible, the interpretation which would advance the object of the Act must be accepted. If the contention of the Revenue is upheld and the decision of the Tribunal is confirmed, the entire object behind enacting such benevolent provision would be defeated and frustrated.

It was also submitted that a similar provision regarding grant of exemption is found in Section 24(1)(vi) of the Act under which deduction is granted in respect of income from house property. Central Board of Direct Taxes (CBDT) issued a circular dt.August 20,1969 wherein it is provided that the income chargeable under the head of "income from house property" be computed after making certain deductions.Section 24(1) reads;

"24 (1) Income chargeable under the head "Income from house property, shall, subject to the provisions of sub-Section (2), be computed after aking the following deductions, namely:-

... ...

Clause (vi) reads;

(vi) Where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital". (emphasis supplied)

... ...

"Where the property has been acquired or reconstructed with borrowed capital, the amount of any interest payable on such capital".

The Circular further stated that a question was raised whether in a case where a fresh loan had been raised to repay the original loan taken for the purposes enumerated in clause (vi) of sub-sec.(1) of Section 24, the interest payable in respect of second loan would also be admissible and a deduction be granted under Section 24(1)(vi). It was then stated that the matter was considered by the Board and it was decided that if the second borrowing had really been used merely to pay the loan and that fact was proved to the satisfaction of the Income Tax Officer, the interest paid on the second loan would also be allowed as deduction under Section 24(1)(vi).

The argument of the learned Counsel is that though the said circular ipso facto does not apply to cases under Section 80V of the Act, the principle underlying it would indeed apply to Section 80V also and that the benefit must be extended to the cases covered by Section 80V and it must be held that if the authorities are satisfied that a loan was taken by the assessee to repay the original loan which was taken for the purpose of payment of tax, benefit of deduction under Section 80V of the Act must be allowed. It was urged by Mr.Shah that it is not the case of the authorities that the loans from Taral and Swati were not for re-payment of loan borrowed by the assessee for payment of tax but was a device to avoid payment of tax. If it were not so, the argument proceeded, there was no reason to reject the said benefit and deduction under Section 80V of the Act.

Mr.Desai, on the other hand, supported the view taken by the Tribunal. He submitted that the language of Section 80V is clear and unambiguous. Deduction under the said provision can be granted only for payment of tax. The case of the assessee was that he had to take loan from Lalbhai Dalpatbhai (H.U.F.) for paying tax for which he had to pay interest to Lalbhai Dalpatbhai (H.U.F.). He claimed the benefit of deduction and it was granted to him. But the application of Section 80V of the Act and the benefit thereunder came to an end as soon as the benefit was claimed and was granted to the assessee. Thereafter, there was no question of applying the said section, when the assessee had taken loans from Taral and Swati. According to Mr.Desai, the law contemplates the exemption and deduction only for

wpayment of tax and not for payment of loan taken by the assessee for payment of tax. The Tribunal, according to Mr.Desai, was right in holding that when loan was taken by the assessee from Taral and Swati, there was no tax liability on the assessee and for discharge of that liability he had not taken any amount. It was, therefore, not necessary for the Tribunal to consider whether the amount of loan from Taral and Swati was a genuine transaction or not. According to the Counsel, even if it were so, the law does not allow deduction and it was rightly disallowed by the Tribunal. By doing so, the Tribunal has not committed any error of law.

It was also submitted that apart from the fact that the Circulars issued by CBDT cannot go beyond the provisions of the Act, in the instant case, no Circular has been issued by the Board under Section 80V of the Act. The learned Counsel submitted that it is settled law that a Circular issued by the Board in connection with the provisions of one section should not be applied by interpreting it to other sections. He also submitted that when the language of the section is clear, the Court will construe the said provision as it is. In tax-matters, there is no equity. He, therefore, submitted that the Tribunal has correctly decided the point against the assessee and the Reference deserves to be answered in negative against the assessee.

Having considered the rival contentions of the parties, we are of the view that the Tribunal has not committed any error in not extending the benefit of the provisions of Section 80V of the Act in favour of the assessee. Our attention was invited to various decisions of the Hon'ble Supreme Court as well as of various High Courts. We do not propose to refer them in detail. Looking to those decisions, the legal position appears to be well settled that if the language of a statute is clear and unambiguous, it must be given effect. But if language is ambiguous and two interpretations are possible, the provision must be interpreted in the manner so as to advance the cause of justice and to give effect to the object behind such enactment. So far as the language of section 80V is concerned, in our opinion, it admits of only one interpretation and it is that if a loan is taken by the assessee for the purpose of payment of any tax due from him under the Act, he would be entitled to deduction on payment of interest on such loan. The Tribunal, in our view, rightly came to the conclusion that the assessee had taken loan for payment of tax from Lalbhai Dalpatbhai (H.U.F.) when there was liability to pay tax and he had to comply with it. At

that time, therefore, Section 80V of the Act was applicable and accordingly he could claim deduction for the payment of interest on the said amount which he had to pay to Lalbhai Dalpatbhai (H.U.F.). It is not disputed that the said benefit was claimed by the assessee and it was granted by I.T.O. in the year 1976-77.

The case of the assessee, however, was that since the amount of loan which was taken by him from Lalbhai Dalpatbhai (H.U.F.) could not be repaid, he had to take another loan from Taral and Swati. According to him, this was done in view of liability to repay loan of Lalbhai Dalpatbhai (H.U.F.) which was for payment of tax. If the object underlying Section 80V of the Act is to be considered, the second loan could be said to be referable to payment of tax, inasmuch as he could not repay the loan within the stipulated period to Lalbhai Dalpatbhai (H.U.F.). The authority,therefore, ought not to have refused to grant the benefit of deduction of payment of interest under Section 80V of the Act. In this connection, our attention was invited to a number of decisions, but we would refer to two of them.

In Gujarat Industrial Development Corporation v. Commissioner of Income Tax, (1997) 94 Taxman 64, the Supreme Court held that while interpreting the provions of Income Tax Act, even if the provision is capable of more than one interpretation, the interpretation which would advance good and achieve purpose for which it has been enacted must be adopted by the Court. It was argued that the principle would not be applicable to fiscal statutes and fiscal statutes must be interpreted by giving literal interpretation. Negativing the contention, the Court held that the general principle was well established principle of law and it would very much apply to fiscal statutes as well.

In Kerala State Co-operative Marketing Federation Ltd. & Ors. Etc. vs. Commissioner of Income Tax, (1998) 147 CTR, 29, the question before the Supreme Court was regarding deduction under Section 80P of the Act. The relevant clause was clause (iii) of sub-section (2) of Section 80P. Deduction was allowed in respect of the marketing of agricultural produce of members of co-operative societies. The Court held that the provision of section 80P was introduced with a view to encouraging and promoting growth of co-operative sector in the economic life of the country and in pursuance of that declared policy of the Government, certain deductions were granted. Hence a Society purchasing

cashew from primary co-operative societies, which were its members, could claim the benefit of deduction under Section 80P of the Act.

Mr.Shah submitted that had the literal interpretation accepted, clause (iii) of sub-section (2) of Section 80P was clear and no benefit could be claimed by the societies. The Supreme Court, however, considering the underlying object behind such exemption, granted the benefit to societies also. In the instant case, according to Mr.Shah, the second loan was for repayment of first loan which was for payment of tax and hence interest payable on the second loan also would attract Section 80V of the Act.

We are afraid, we cannot uphold the said argument of Mr.Shah. So far as interpretation is concerned, as stated by us, there is no ambiguity in the language used by the Legislature. According to us, the Tribunal was right in observing that deduction can be granted for payment of tax which was allowed to the assessee. The ratio laid down in Kerala State Co-operative Marketing Fedration Ltd. and Ors. (supra) does not carry the case of the assessee further, as in that case, the object was grant of deduction for marketing of agricultural produce and keeping the object in mind, the apex Court held that the said benefit must be extended to societies. In the case on hand, the second loan was not for payment of tax and once the loan was obtained and amount of tax was paid, Section 80V of the Act ceased to apply. To a subsequent loan for repayment of the first loan, Section 80V has no application. Hence, the above argument does not impress us.

So far as Circular of CBDT is concerned, in Builders Association of India v. Union of India and Others, 209 ITR 877, the Supreme Court held that the Circular issued by the Board explaining provisions of one section would not be relevant and would not apply to the provisions of other section. In that case, a circular was issued explaining certain provisions of Sec.32AB of the Act which was pressed in service for construing the provisions of Section 32A of the Act. The Court held that no such construction would be permitted and the application of such circulars would be relevant to the section under which it was issued.

Similarly, in Kerala Financial Corporation v. Commissioner of Income Tax, 210 ITR 120, the Supreme Court observed that a Circular of the Central Board of Direct Taxes cannot override or detract from the Act.

Such instructions are issued for administration of the Act.They, however, could not destruct the well-established principles of interpretation of statutes. If the language of the section is clear, it will have to be given effect. In the instant case, since the language of Section 80V of the Act is clear and umabiguous and allows deduction of payment of interest on loan which is taken by the assessee for payment of tax, only that amount can be deducted. That benefit is given to the assessee. Interest paid on the second loan taken by the assessee for the repayment of first loan was rightly held to be not falling under the exemption under Section 80V of the Act.

It was argued that in Navnitlal C. Javeri v. K.K.Sen, Appellate Assistant Commissioner of Income-Tax, Bombay, 56 I.T.R. 198 (SC); and Ellerman Lines Ltd. v. CIT (1971) 82 ITR 913 (SC); it was held by the Supreme Court that the Circulars issued by CBDT under Section 119 of the Act are binding on all officers employed in the implementation of the Act "even if they deviate from the provisions of the Act".(K.P.Verghese v. Income-Tax Officer, Ernakulam and another, 131 ITR 597 (613)).

In the instant case, however, we do not enter into larger question and express no opinion on that aspect, since no direct question arises in this case, as the circular is not issued under Section 80V of the Act. Since no circular is issued under Section 80V of the Act, the question of efficacy thereof does not arise.

For the foregoing reasons, in our considered view, the tribunal has not committed an error of law in interpreting the provisions of Section 80V of the Act. The reference is accordingly answered against the assessee and in favour of Revenue. In the facts and circumstances of the case, no order as to costs.

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